

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KEVIN D. LIPSKA,

Plaintiff,

v.

CORRECTIONAL OFFICER NILES *et al.*,

Defendants.

Case No. C07-5675RJB/JKA

ORDER DENYING PLAINTIFF'S  
SECOND MOTION FOR  
APPOINTMENT OF COUNSEL

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is a motion in which plaintiff seeks a temporary restraining order and again asks for appointment of counsel (Dkt. # 15). The motion for a temporary restraining order must be addressed in a separate Report and Recommendation.

This is the second motion for appointment of counsel in this action. Plaintiff has recently been moved to the Washington State Penitentiary, Intensive Management Unit, IMU (Dkt # 15). He alleges he is having difficulty accessing his legal materials for this case. While this housing change may restrict his access to materials, he has not shown appointment of counsel is necessary. Normally, when the court receives a repetitive motion the court cautions the party that such motions may result in sanctions. Given

1 the change in housing the court does not find this motion to be improper.

2 There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983.  
3 Although the court, under 28 U.S.C. § 1915(e)(1), can request counsel to represent a party proceeding *in*  
4 *forma pauperis*, the court may do so only in exceptional circumstances. Wilborn v. Escalderon, 789 F.2d  
5 1328, 1331 (9th Cir. 1986); Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe,  
6 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the  
7 likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of  
8 the complexity of the legal issues involved. Wilborn, 789 F.2d at 1331.

9 Plaintiff has demonstrated an adequate ability to articulate his claims *pro se*. This case does not  
10 involve exceptional circumstances which warrant appointment of counsel. Accordingly, Plaintiff's second  
11 motion for appointment of counsel, (Dkt. # 15), is **DENIED**.

12 The Clerk is directed to send a copy of this Order to plaintiff and counsel for defendants.

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14 DATED this 15th day of May, 2008.

15  
16 /s/ J. Kelley Arnold  
17 J. Kelley Arnold  
18 United States Magistrate Judge  
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